IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Writ Petition No. 1195 of 1991

Alleppa Shettappa Kunchikorve,
residing in Room No. 1, Chawl No. G-23,
Plot No. 4, Matunga Labour Camp,
Bombay - 400 019 .. Petitioner.

V/s.

1. Municipal Corporation of
   Greater Bombay, having its
   office at Mahapalika Marg,
   Mumbai - 400 001.

2. Additional Municipal Commissioner,
   Municipal Corporation of Gr. Bombay,
   Head Office, Bombay - 400 001

3. Deputy Municipal Commissioner, Zone-I,
   Bombay Municipal Corportion,
   E/Ward Office, Sankli Street, Bombay

4. Chief Security Officer,
   Bombay Municipal Corporation,
   Mahapalika Marg, Bombay - 400 001

5. Deputy Municipal Commissioner, Zone-III,
   St. Martin's Road, Bandra (West),
   Bombay - 400 050

6. Deputy Administrative Enquiry Officer,
   D/Cell, G/North Ward, Municipal Corporation
   of Gr. Bombay, Woollen Mill Lane,
   Behind Plaza Cinema, Dadar (West),
   Bombay - 400 016. .. Respondents.

Mr. Santosh Shetty i/b. M/s. M.P. Vashi & Associates for the Petitioner.
Ms. N.V. Sanglikar for the Respondents.

CORAM : F.I. REBELLO &
S.R. SATHE, JJ.
DATED : 16.07.2004.

ORAL JUDGMENT (PER - S.R. SATHE, J.) :-

1. Being aggrieved by the order passed by Deputy Municipal Commissioner, Zone-I dated 26.8.1988 and it's subsequent confirmation by the Additional Municipal Commissioner, Bombay whereby the Petitioner was demoted

from the post of Security Assistant to Clerk, the

Petitioner has filed this Writ Petition under Article 226 of the Constitution and has prayed that the above mentioned two orders be set aside.

2. Brief facts giving rise to this Petition are as under:-

Petitioner was appointed as Labourer in Respondent No. 1 Corporation on 1.4.1976. Thereafter on 13.9.1979, he was promoted as Clerk. Thereafter on 18.2.1983, he was promoted and appointed as Security Assistant and then transferred to Deonar Slaughter House. While he was working there on 20.12.1986, he received his suspension order, wherein it was alleged that on 12.11.1986, he mis-behaved in the Municipal Corporation premises and did not allow the hand carts to go within premises and he did so, under the influence of alcohol and when the Security guards and others tried to convince him, he used filthy language against them, and he also behaved in arrogant fashion, when he was called by the General Manager in his cabin.

As a result of this incident, the chargesheet was issued against the delinquent Petitioner and full fledged inquiry was carried out. After the inquiry, the Petitioner was found guilty of alleged misconduct and

the Enquiry Officer recommended punishment of demotion.

The Deputy Municipal Commissioner, Zone-I after perusing the papers found that the allegation that the Petitioner after Office hours unauthorisedly entered the Deonar Abattoir through Kena gate was not proved. He, however, held that sofar as the other charges are concerned there is sufficient evidence. He therefore accepted the recommendation of the Enquiry Officer and ultimately issued an order dated 26.8.1988.

Being aggrieved by that order, the Petitioner preferred an Appeal in pursuance of clause 53 of the Manual of Departmental Enquiries. The Municipal Commissioner, referred the matter to Deputy Municipal Commissioner, Zone-III, and accordingly, he heard the Appeal and came to the conclusion that the punishment recommended by the Deputy Commissioner, Zone-I was harsh and therefore, recommended that the said punishment be reduced to withholding of his next increments for a period of 3 years with permanent effect and his suspension period be treated as Absence without leave. The said order was placed before the Additional Municipal Commissioner (V) and he accepted the said order. It appears that the said order was never communicated in person to the Petitioner. Naturally, the Petitioner requested the Municipal Corporation to

allow him to join his duties as Assistant Security at Deonar Slaughter House. However, he was not allowed to do so and on the contrary, a memo was issued to the

Petitioner, informing him that his Appeal has been rejected. Being aggrieved, he has filed the present Petition.

3. In this Petition before us, the learned Advocate for the Petitioner has urged 3 points.

Firstly, he submitted that there was in fact no sufficient material before the Enquiry Officer, as a result of which it was unnecessary to hold that the alleged misconduct has been proved. Secondly, he argued before us that the Appeal that was preferred by the Petitioner was in fact directed by the Municipal Commissioner to the Deputy Municipal Commissioner, Zone-III and after hearing the said Appeal, the Deputy Municipal Commissioner had come to the conclusion that the punishment imposed on the Petitioner was harsh and therefore, it was reduced to withholding of 3 increments. He therefore, submitted that under the said circumstances, it was not proper on the part of Municipal Commissioner again to hear the said Appeal particularly, when the order passed by the Deputy Commissioner, Zone-III was already confirmed by the Additional Commissioner (V). Lastly, he submitted that

the punishment imposed on the Petitioner is not in proportion with the alleged misconduct. He therefore, submitted that the Petition be allowed and the orders mentioned herein above be set aside.

4. As against this, the learned Advocate for the Municipal Corporation submitted that there was sufficient material to prove the guilt of the Petitioner and it was only after full fledged departmental enquiry, the punishment has been imposed, so the Court should not interfere with the order of punishment under Article 226 of the Constitution. The learned Advocate also submitted that if the order of punishment, in the present circumstances is reduced, then it may give wrong signals and with a view to maintain discipline in the department, it is necessary to dismiss the Petition.

5. From the perusal of the record, it appears that the alleged misconduct has taken place outside the duty hours of the delinquent Petitioner. It is true that the same has taken place at the place of business, but due regard shall have to be given to the fact that it was outside his duty hours. It must also be noted that even the Deputy Commissioner, Zone-I found that the allegation with regard to charge no. I i.e. unauthorisedly entering the premises after duty hours was not proved. What was proved was the arrogant behaviour of the Petitioner with the licencees and with

the Security Guards as well as the two superior officers of the Petitioner.

6. It is pertinent to note that the Petitioner had in fact preferred an Appeal against the order of demotion

and the same was heard by the Deputy Commissioner, Zone-III and thereafter it was confirmed by the Additional Commissioner (V). Not only that but in pursuance of the said order, a memo was issued to the concerned Section Officer, directing him to allow the Petitioner to resume his duties at Deonar slaughter house. Inspite of the same, we find that the Petitioner was not allowed and on the contrary, after lapse of few months, the Municipal Corporation issued a memo informing him that his appeal has been rejected by the Municipal Commissioner. When he asked for the certified copy of the said order, that was also refused. Thus, it appears that the Municipal Commissioner had in fact entrusted the Appeal to the Deputy Municipal Commissioner, Zone-III and thereafter it was placed before the Additional Commissioner (V). Hence there was no necessity to hear the said Appeal again by the Municipal Commissioner. The action of the Municipal Corporation to that extent appears to be improper.

7. The learned Advocate for the Municipal Corporation has drawn our attention to various rulings, such as

State Bank of India and others Vs. **Samarendra Kishor Endow and another (1994) 2 SCC 537; U.P. State Road Transport Corporation Vs. Subash Chandra Sharma and others (2000) 3 SCC 324; Mithilesh Singh Vs. Union of India and others (2003) 3 SCC 309.** From the perusal of the above mentioned authorities, it is very clear that

in all these Authorities it has been observed that normally a Tribunal or the High court should not interfere with the order of punishment imposed by the disciplinary authority after full fledged enquiry. However, at the same time, it has to be noted that there is no hard and fast rule, whereby it has been stated that under no circumstances, the High Court can interfere with the order of punishment. On the contrary, a useful reference can be made to the authoritative pronouncement in **U.P. State Road Transport Corporation Vs. Maheshkumar 2000 (2) SLR (SC) 435,** wherein the Apex Court has in fact observed that "Law therefore, is not that the High Court can in no circumstances, interfere with the question of punishment imposed upon a delinquent employee after disciplinary proceedings". From the perusal of the above mentioned rulings, as well as the earlier 3 rulings mentioned above, it is very clear that when it appears that the punishment imposed is grossly improper, then the High Court can certainly interfere with the order of punishment.

8. It is needless to say that while considering the question of punishment, the disciplinary authority has to take into consideration all the facts and circumstances. It is pertinent to note that the Respondent No. 1 has issued a circular dated 7.6.1967, wherein mode of departmental punishments has been

broadly standardised. If we peruse entry no. 42 of the same, we find that for use of filthy language or a deliberate act of rudeness at place of duty if directed towards a superior officer, maximum punishment that can be levied is removal from Municipal service and the minimum is withholding of one increment for a period of one year with permanent effect. In the instant case, the Deputy Commissioner Zone-I imposed the punishment of demotion. If we peruse the order passed by the Deputy Commissioner on 26.8.1988, we find that therein he has not at all given any reasons as to why he has come to the conclusion of imposing punishment of demotion. To that extent, the order with regard to the punishment passed by the Additional Commissioner Zone-I appears to be improper and harsh under the circumstances of the case. Neither the Deputy Commissioner, Zone-I or the Municipal Commissioner have taken into consideration the fact that the alleged misconduct has taken place outside the duty hours of the Petitioner.

9. It has to be noted that when this Petition was admitted on 29.4.1991, interim relief was granted in terms of prayer clause (d), as a result of which, the Petitioner was allowed to work as Security Assistant. We have been informed that till today, the Petitioner is accordingly, working on the said post.

In view of the above, we feel that this is a fit case, where the High Court must interfere while exercising powers under Article 226 of the Constitution of India and the punishment of demotion has to be set aside and instead punishment of withholding 3 increments, which was in fact initially given by the Deputy Municipal Corporation, Zone-III and confirmed by Additional Municipal Commissioner has to be imposed.

10. In this view of the matter, the Petition is allowed in terms of prayer clause (c). Parties to bear their own costs.

11. Parties to act on an ordinary copy of this order, duly authenticated by the Associate/Court Stenographer. C.C. Expedited.

(F.I. REBELLO, J.)

(S.R. SATHE, J.)